

ECONOMIC INVESTMENT PROGRAM GRANT AGREEMENT

THIS AGREEMENT is entered into effective the date October __, 2023 (the “Effective Date”) of the execution by the last of the parties hereto, between:

- City of Ocala, a Florida municipal corporation (“City”).
- Averitt Express, Inc., a Tennessee Corporation (“Applicant”).

WHEREAS:

- A. City has established an Economic Investment Program (“EIP”) which is designed to create economic growth within the City’s municipal limits and the Ocala Electric Utility service territory by selectively awarding grants to new or existing businesses that seek to locate or expand their business facilities.
- B. Applicant has requested the City Grant¹ from the EIP of up to \$96,000.00 to be used for the purposes set forth herein.
- C. The City is willing to assist Applicant by making the City Grant available provided Applicant agrees to the requirements set forth herein and other terms and conditions hereof.
- D. The City Council of the City of Ocala has determined that the City Grant award set forth herein is in the public interest because it promotes a prosperous economy in the City of Ocala.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto agree as follows:

- 1. **Definitions.** In addition to the terms defined above, the following terms have the following meanings:
 - 1.1. Achievement Date – The date that Applicant employs the number of FTEs set forth in paragraph 3.3.
 - 1.2. Applicant Requirements – The requirements of Applicant set forth in paragraph 3.
 - 1.3. Business – Applicant’s business of supply chain management including retail distribution, fulfillment services and transportation management.
 - 1.4. Capital Improvements – The construction or renovation of the Facility on the Premises, and equipping the Premises with machinery, equipment and office fixtures, pursuant to paragraph 3.2 below.
 - 1.5. City Grant – The grant to be made by City to Applicant pursuant to paragraph 2.

¹ Terms capitalized herein and not otherwise defined herein are defined in paragraph 1.

- 1.6. Default Percentage – A percentage, calculated as set forth in paragraph 4.3.2.b, used to compute Applicant’s financial obligation to City, if any, upon a default under the Applicant Requirements. Examples are shown on **Exhibit A**.
- 1.7. Employment Requirements – The Applicant Requirements set forth in paragraph 3.3.
- 1.8. Existing Location – The current location of Applicant’s Business located at 1415 Neal Street, Cookeville, TN 38501.
- 1.9. Facility – The facility to be provided by or on behalf of Applicant on the Premises, consistent with paragraph 3.2 of this Agreement, to be utilized by Applicant in connection with its Business in Marion County, Florida.
- 1.10. FTE – Full time equivalent employees (based on 2080 paid hours per year, excluding overtime).
- 1.11. Initial Achievement Date – The date that Applicant employs the initial number of FTEs set forth in paragraph 3.3.1.a.
- 1.12. Other Locations – The Existing Location and/or other real property (other than the Premises) located within the municipal limits of City and upon which Applicant conducts its Business.
- 1.13. Premises – The real property owned, or to be acquired, by Applicant and described on the attached **Exhibit B**.
- 1.14. Project – The Applicant’s completion of the Capital Improvements.
- 1.15. Report – One or more of the Initial Report or the Annual Reports to be provided by Applicant under the Reporting Requirement.
- 1.16. Requirement – One or more of the Occupancy Requirement, Capital Improvements Requirement, Employment Requirements, or Reporting Requirement.
- 1.17. Substantial Completion Date – The date of substantial completion of the portion of the Capital Improvements described in paragraph 3.2.1, which shall be the earlier of: (a) the date that City issues a certificate of occupancy to Applicant for the Premises; or (b) the date that Applicant occupies the Premises and begins to conduct business therefrom.

2. **City Grant and City Requirements.**

- 2.1. Approval. The City approves the City Grant as set forth herein in an amount not to exceed a total of \$96,000.00.
- 2.2. Purpose of City Grant. The City hereby acknowledges significant benefit by virtue of development of the Project and creation of jobs. As an incentive to construct the desired improvements associated with the Project, and in anticipation of the benefits to be received by City and the public if the Project is constructed, City shall pay to Applicant a City Grant.

2.3. Time of Payment.

2.3.1. The City Grant shall be paid as follows:

- a. The first payment of the City Grant, in the amount of \$48,000.00 shall be made upon satisfaction of the following conditions: (the “*City Grant Payment Conditions*”):
 - 1). City shall be provided with a certification from the Contractor that the Project has been Completed in substantial accordance with the Applicant’s Approved Plans.
 - 2). Applicant shall provide to City documentation (consisting of copies of applicable invoices and corresponding copies of cancelled checks relating to machinery, fixtures and equipment and development and construction of the Project) of its costs associated with the Capital Improvements, and such other reasonable information as City may request to provide proof of payment of such sums.
 - 3). As a condition of any payment of the City Grant, Applicant shall provide City with proof that all ad valorem taxes on the Premises, and all tangible personal property taxes on tangible personal property located on the Premises, have been paid.
 - 4). City shall cause for the first City Grant payment to be made within thirty (30) days of satisfaction of the City Grant Payment Conditions.
- b. The remainder of the City Grant, comprising a total of \$48,000.00, shall be payable within thirty (30) days of satisfaction of the Achievement Date.

3. **Applicant’s Requirements.**

3.1. Occupancy Requirement. Applicant shall occupy the Premises and Existing Location for a period of no less than 5 years from the Substantial Completion Date and utilize the Premises and Existing Location for Applicant’s Business, commencing with the January 1 that immediately follows the Substantial Completion Date.

3.2. Capital Improvements Requirement. Applicant shall provide the Capital Improvements as follows:

3.2.1. Constructing the Facility on the Premises so that it consists of approximately 20,000 square feet of usable area, at a cost of approximately \$11,650,000.00.

- a. For purposes of the foregoing: the following matters shall not be included in calculating such cost: the cost to purchase the Premises and any costs incurred, or amounts paid in connection with, financing the purchase or construction.

- b. This portion of the Capital Improvements shall be provided such that the Substantial Completion Date is reasonably expected to occur within fifteen (15) months of the Effective Date, so far as the timing of such Substantial Completion Date is within the Applicant's control.

3.3. Employment Requirements.

- 3.3.1. Employ, on the Premises, at least thirty-four (34) new FTEs at an average annual salary (or hourly equivalent) of \$69,112.00. These employees shall be hired such that the Achievement Date occurs no later than three (3) years after the Substantial Completion Date.
 - a. An Initial Achievement Date shall be met twelve (12) months after the substantial completion date and provide a minimum of twenty-two (22) new FTEs at an average annual salary (or hourly equivalent) of \$69,112.00.
- 3.3.2. Maintain, on the Premises, an average of at thirty-four (34) FTEs at an average annual salary (or hourly equivalent) of \$69,112.00, each (which requirement must be met and shall be calculated as of each anniversary of the Achievement Date) for a period of two (2) years from the Achievement Date.
- 3.3.3. For purposes of the Employment Requirements, the number of FTEs for each year shall be calculated by: (a) totaling the gross wages, as reported on the applicable State Employment Reports for the annual reporting period; (b) dividing the foregoing total by \$69,112.00, and then (c) rounding such number to the next highest whole number. In the event that the State of Florida changes the frequency within which the State Employment Reports are required to be filed (e.g., from quarterly to annually), the parties will amend the provisions of this paragraph so that they are consistent with the new reporting period.
- 3.4. Electric Service Requirement. Applicant may obtain electric services from Ocala Electric Utility to the extent that the Ocala Electric Utility is able to provide adequate electric services to meet Applicant's electrical needs at the Premises. If this service is provided by Ocala Electric Utility, the Applicant will remain an exclusive Ocala Electric Utility customer for a period of five (5) years from the Substantial Completion Date.
- 3.5. Fiber Optic Service Requirement. To the extent that fiber optics services are required, provide the City with an opportunity, at the City's request, to offer such service at competitive rates; provided that Applicant shall not be deemed in default under this paragraph 3.5, for purposes of paragraph 4, if Applicant selects a third party to provide fiber optics services at any time either before or after providing the City an opportunity to offer such services and City is unable to match the rate of the third party.
- 3.6. Reporting Requirement. Applicant shall submit an Initial Report, and thereafter Annual Reports, to City and County as follows:

- 3.6.1. The Initial Report will be due by March 1 after the Substantial Completion Date and shall include documentation sufficient for the City to confirm Applicant's compliance with the Capital Improvements Requirement which may include contracts, invoices or statements reflecting the cost of such Capital Improvements.
- 3.6.2. Annual Reports will be due each year commencing with March 1 after the first anniversary of the Substantial Completion Date, and continuing on the same day of each year thereafter until the year after the last year during which Applicant is required to comply with any other Requirements of paragraph 3.
- 3.6.3. The Initial Report shall be accompanied by, and following the Initial Report, all Annual Reports shall consist solely of, all State of Florida reemployment compensation reports (including, without limitation, quarterly State Employment Reports) filed by or on behalf of Applicant, concerning activities at the Facility for the calendar year covered during the reporting period (except to the extent that such documentation has been included in prior Reports).
- 3.6.4. The "reporting period" for the Reports shall be January 1 through December 31 of the preceding calendar year.
- 3.6.5. Applicant shall not be deemed in default under this paragraph 3.6, unless it fails to submit a Report and other documentation required hereunder within thirty (30) days after written notice from a Local Government.

4. **Default.**

- 4.1. Force Majeure. No Party shall be held in default of this Agreement for any delay or failure of such Party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as set forth in paragraph 9.21.
- 4.2. Repayment. If Applicant defaults under any Requirement listed in Paragraph 3, Applicant shall repay to the City, all City Grant amounts paid to Applicant with interest at the rate of the Wall Street Journal prime rate in effect on the date that City demands repayment under this paragraph 4, calculated from the date of payment by City to the date of repayment by Applicant subject to proration of the amount to be repaid as set forth in the following subparagraph.
- 4.3. Proration and Calculation. Amounts to be paid by Applicant under this paragraph 5.3, shall be prorated as follows:
 - 4.3.1. All proration under the following subparagraphs shall be rounded to nearest whole percent.
 - 4.3.2. Any default by Applicant under an Applicant Requirement shall be reduced pro rata in the event that Applicant partially complies with such Applicant Requirement.

- a. Such proration shall result in the determination of a percentage (the “Default Percentage”) to be multiplied by the amount of the City Grant paid by City to determine the repayment under paragraph 4.2.
- b. Calculation.
 - 1). The Default Percentage shall equal the percent determined by dividing the amount by which Applicant failed to meet the applicable Applicant Requirement by the amount of such Applicant Requirement.
 - 2). For purposes of the foregoing:
 - a). The Default Percentage under paragraph 3.1 shall be based upon the number of years that Applicant occupies the Premises and operates its Business at the Facility below the number of required years. Such Default Percentage shall be calculated for each year of the default under this Applicant Requirement.
 - b). The Default Percentage under paragraph 3.2 shall be based upon the actual amount that Applicant spends on Capital Improvements below the amount of the required costs of Capital Improvements. Such Default Percentage shall be calculated for each year of the default under this Applicant Requirement.
 - c). The Default Percentage under paragraph 3.3 shall be based upon the number of FTEs Applicant maintains below the Applicant Employment Requirements. Such Default Percentage shall be calculated each year of a default under the applicable Applicant Employment Requirements.
 - d). The Default Percentage under paragraph 3.4 shall be based upon the number of years Applicant remains an exclusive Ocala Electric customer below the number of required years. Such Default Percentage shall be calculated for each year of the default under this Applicant Requirement.

4.4. Notice and Opportunity to Cure.

- 4.4.1. Unless another time frame is specifically stated herein for a specific event of default, prior to declaring a default hereunder, the non-defaulting Party must provide the defaulting Party with written notice of default and at least ninety (90) days to cure such default.
- 4.4.2. Further provided, however, that no notice of default or opportunity to cure needs to be provided:

- a. In the event the defaulting Party has previously breached a provision of this Agreement, and thereafter knowingly or intentionally breaches the same provision;
 - b. In the event any Contingency, or condition precedent to the payment of a Grant (e.g., concerning the payment of Local Taxes as a condition to receipt of an Application/Permit Grant), has not occurred; or
 - c. Concerning any default under any Employment Requirement.
- 4.5. Termination of Agreement. The City may terminate this Agreement in whole or in part, terminate any unperformed obligation hereunder, or rescind its Grant:
 - 4.5.1. As and to the extent expressly set forth herein (e.g., as set forth in paragraph 4.2; or
 - 4.5.2. Because of any fraud or misrepresentation made to City in connection with a City Grant or in Reports submitted by Applicant.
- 4.6. Remedies Not Exclusive. Except as expressly set forth in this Agreement, the specified rights and remedies to which the City and Applicant are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which the City or Applicant may have.
- 4.7. Limitation on Damages. The parties hereby irrevocably waive any right to any punitive, special, incidental or consequential damages.
- 4.8. No Waiver. The failure by the City or Applicant to promptly insist on strict performance of any provision of this Agreement shall not be deemed a waiver of any right or remedy that the City or Applicant may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such provision.
- 4.9. Miscellaneous.
 - 4.9.1. In the event that Applicant repays to the City a portion of the City Grant based upon a proration, and defaults in subsequent years, the amount of the City Grant repaid by Applicant during the preceding years shall be deducted from the City Grant before applying the Default Percentage calculated under paragraph 4.3.2.
 - 4.9.2. If a default by Applicant under one Applicant Requirement also constitutes a default by Applicant under another Applicant Requirement, Applicant shall pay, under paragraph 4.3, the amount owed for only one Applicant Requirement; such amount shall be the highest amount calculated for the Applicant Requirements.
 - 4.9.3. In no event shall Applicant be required to pay under paragraph 4.1 more than the amount of the City Grant paid by City with interest at the rate as calculated pursuant to paragraph 4.3.

- 4.9.4. The City shall have the right to recover any City Grant paid to Applicant, without proration under paragraph 4.3:
 - a. Because of any fraud or misrepresentation made to City or the Financial Review Committee in connection with the City Grant, or in Initial or Annual Reports submitted by Applicant; or
 - b. Because of a default under the Applicant Requirements set forth in paragraph 3.6.
5. **Adherence to Code of Ordinances.** Applicant agrees to adhere to all ordinances of the City of Ocala. Applicant understands that by making the City Grant, City is not waiving compliance with the requirements of the City Code and adopted building regulations.
6. **Good Faith Covenant.** Applicant represents that the information provided to the City and to the Financial Review Committee (“Financial Review Committee”) of the Ocala/Marion County Chamber & Economic Partnership in obtaining the City Grant was in all regards true and correct and that all representations contained therein were made in good faith.
7. **Rights and Remedies.** The City shall have the right to rescind the City Grant, terminate this Agreement, or take all appropriate action, including litigation, to recover any amounts granted to Applicant for its failure to abide by the terms of this Agreement or because of any fraud or misrepresentation made to the City or the Financial Review Committee in obtaining the grant made herein. No remedies of the City are exclusive.
8. **Limitation of Liability.** In no event shall City be liable to Applicant for an amount in excess of the City Grant made herein. In no event shall Applicant be liable to City for an amount in excess of the City Grant made herein.
9. **General.**
 - 9.1. Reference to Parties. Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
 - 9.2. Waiver. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
 - 9.3. Governing Law. This Agreement is and shall be deemed to be a contract entered into and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.

- 9.4. Severability of Illegal Provisions. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
- 9.5. Paragraph Headings. The paragraph headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
- 9.6. Rights of Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 9.7. Time.
- 9.7.1. Time is of the essence concerning all of the provisions of this Agreement.
- 9.7.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.
- 9.7.3. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall automatically extend to 5:00 p.m. on the next ensuing business day.
- 9.7.4. For purposes of this Agreement, "legal holiday" means the day set aside by Section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day, or Christmas Day, and any day upon which the Clerk of the Court of Marion County, Florida, is closed for ordinary business.
- 9.8. Construction of Agreement. Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
- 9.9. Amendment. No amendment to this Agreement shall be effective except those agreed to in writing and signed by both of the parties to this Agreement.
- 9.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
- 9.11. Notices.
- 9.11.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in

writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any Party may designate by Communication complying with the terms of this paragraph 9.11:

- a. If to Applicant or Guarantor: Attn: Rhonda Otto, Properties and Real Estate, Averitt Express, Inc., 1415 Neal Street, Cookeville, TN 38201; Email: rotto@averitt.com.

- 1). With copy (which shall not constitute notice hereunder) to Adams and Reese LLP, c/o Rob Breunig, 1600 West End Ave., Suite 1400, Nashville, TN 37203; email rob.breunig@arlaw.com.

- b. If to City: City Manager, City of Ocala, 110 SE Watula Avenue, Ocala, FL 34471; Email: plee@ocalafl.org.

- 1). With copy to: Director - Economic Development, Growth Management, City of Ocala, 201 SE 3rd Street, 2nd Floor, Ocala, Florida 34471; Email: ahale@ocalafl.org.

9.11.2. Each such Communication shall be deemed delivered:

- a. On the date of delivery if by personal delivery;
- b. On the date of email transmission if by email (subject to paragraph 9.11.5); and
- c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
- d. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. (Eastern Time) shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

9.11.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with paragraph 9.11.2.

9.11.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

9.11.5. Concerning Communications sent by email:

- a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's

Internet service provider or otherwise that the email was not delivered or received;

- b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an “out of the office message”), the email shall not be deemed delivered until the recipient returns;
- c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
- d. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
- e. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

9.12. Attorney Fees. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys’ fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys’ fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

9.13. Jurisdiction and Venue. The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

9.14. JURY WAIVER. IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY

RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

- 9.15. Right to Inspect. Upon written request, and after five (5) business days' advanced notice is given, the City shall have the right to inspect Applicant's facilities and its payroll records solely to the extent necessary to verify the contents of the Applicant's most recent Annual Report, provided the Right to Inspect shall be at City's sole expense and shall not occur more than one (1) time per year.
- 9.16. Public Records Act.
- 9.16.1. Applicant acknowledges and agrees that the City is subject to Chapter 119, Florida Statutes (the "Public Records Act").
- 9.16.2. The City acknowledges and agrees that Applicant has advised it that the State Employment Reports contain information that Applicant considers confidential and trade secrets (collectively, the "Confidential Information") that, if disclosed, could provide its competitors with an unfair advantage, including but not limited to: compensation paid to employees identified by name or position; names and Social Security Numbers of employees; and Tax Identification Number of Applicant.
- 9.16.3. The City believes that under the Public Records Act and concerning the State Employment Report:
- a. Under Section 443.1715, Florida Statutes (2015), information revealing the identity of Applicant or any employee of Applicant obtained under the administration of Chapter 443, Florida Statutes, is confidential and exempt from the Public Records Act, and that the State Employment Report is obtained from Applicant under the administration of Chapter 443.
 - b. To the extent that the State Employment Report contains trade secrets, it is exempt under Sections 288.075, 815.04, and 815.05, Florida Statutes (2015).
 - c. Other provisions of Florida law (including, without limitation, Section 213.053, Florida Statutes (2015) may exempt the State Employment Report from the Public Records Act.
- 9.16.4. If the City receives a request under the Public Records Act for a State Employment Report it shall:
- a. Initially advise the person requesting the document that the City believes the document is exempt under the Public Records Act.

- b. Promptly advise Applicant of the request and any further communications from the person requesting for the document, so that Applicant may, consistent with the City's obligations under the Public Records Act, file an action for declaratory or injunctive relief concerning the application of the Public Records Act to the document or precluding the release of the document.
- 9.16.5. In the event that any party to this Agreement has a reasonable good faith belief that the representation in paragraph 9.16.3.a is incorrect (either originally or based upon a change in the law), it may request that the other parties confer in good faith concerning such belief and agree to amendments to this Agreement that may be necessary to accommodate concerns to avoid the disclosure of Confidential Information. Such amendments could include, without limitation, redacting information on the State Employment Report, to delete the Confidential Information or revising the formula for calculating FTEs in paragraph 3.3.3 of this Agreement.
- 9.17. No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third Party as creating the relationship of partnership or joint venture between the Parties hereto.
- 9.18. References. Where the context permits, the singular number shall include the plural (and vice versa) and the use of any gender shall be applicable to all genders.
- 9.19. Exhibits.
 - 9.19.1. Any exhibits attached to this Agreement shall be deemed to be incorporated into this Agreement.
 - 9.19.2. The following exhibits are attached to this Agreement:
 - a. Exhibit A – Examples of Default Calculations
 - b. Exhibit B – Description of Property
- 9.20. Confidentiality. To the extent permitted by applicable law, including, without limitation, Sections 119.07 and 288.075, Florida Statutes, any business records relating to payroll and personnel shall remain confidential and shall not be released: to anyone without a need to know the information contained therein; in connection with the enforcement of this Agreement; or as may be required by court order.
- 9.21. Force Majeure. Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; pandemic; archaeological excavation; third parties not under the direct or indirect control of the Party whose performance is delayed and who do not have a direct or indirect contractual relationship with the Party whose performance is delayed; or act of God, shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If such Party is delayed in any

performance pursuant to this Agreement for occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such Party is delayed. The Party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each Party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other Parties, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

- 9.22. Entire Agreement. This Agreement, including exhibits, (if any) contains all agreements between the Parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement.

THIS AREA INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date below their signatures.

CITY

City of Ocala, a Florida municipal corporation

By: _____
James P. Hilty, Sr, Council President

Date: _____

Attest:

Angel Jacobs
City Clerk

Approved as to Form and Legality:

William Sexton, City Attorney

APPLICANT

Averitt Express, Inc. a Tennessee Corporation

By: _____
Johnny R. Fields, CFO

Date: _____

Witness

Print Witness Name

Witness

Print Witness Name

EXHIBIT A EXAMPLES OF DEFAULT CALCULATIONS

EIP Default Calculations

City Contributions		\$96,000.00
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Requirements and Default Percentages:

Paragraph	Requirement	Required		Actual	Default Percentage
3.1	Occupy Premises	5	years after Substantial Completion Date	3	40%
3.2	Capital Improvements	\$11,650,000		\$11,184,000	4%
3.3	Employment	34	NEW FTEs	32	6%
3.4	Exclusive OEU Customer	5	years after Substantial Completion Date	3	40%

Default under Occupy Premises Requirement

Applicant occupies the premises for a period of		3	years after Substantial Completion Date			
	Default Percentage	40%				
Applicant shall repay to City:		40%	times	\$96,000.00	equals	\$38,400.00

Default under Capital Improvements Requirement

Applicant spends \$11,184,000 on Capital Improvements						
	Default Percentage	4%				
Applicant shall repay to City:		4%	times	\$96,000.00	equals	\$3,840.00

Default under Employment Requirement

First Example - During the first year after the Achievement Date, Applicant employs 32 FTEs						
	Default Percentage	6%				
Applicant shall repay to City:		6%	times	\$ 96,000.00	equals	\$5,760.00
Second Example - During the second year after the Achievement Date, Applicant employs 32 FTEs						
Applicant shall repay to City:		6%	times	\$90,240.00	City grant less amount paid in First Example	\$5414.40

Default under Exclusive OEU Customer Requirement

Applicant remains an exclusive OEU customer for		3	years after Substantial Completion Date			
	Default Percentage	40%				
Applicant shall repay to City:		40%	times	\$96,000.00	equals	\$38,000.00

EXHIBIT B
DESCRIPTION OF PROPERTY

Property is situated in the County of MARION, State of Florida and identified by Parcel ID 13717-001-00, and described as follows:

Tract 2 of OCALA MARION COUNTY COMMERCE PARK, according to the Plat thereof as recorded in Plat Book 13, Page(s) 40, of the Public Records of MARION County, Florida.